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**To:** Microsoft ATR  
**Date:** 1/23/02 1:23pm  
**Subject:** Microsoft Settlement

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**CC:** Helen C. O'Boyle [ASI]

Greetings,

I am writing to note my dissatisfaction with the proposed remedies in the MS anti-trust case. I am a consultant who works as a software developer, network support engineer, educator and writer. My customer base generally consists of smaller organizations and/or individuals.

I am a Microsoft fan. I use their products daily, recommend them to customers, have an equity stake in the corporation and am a Microsoft Certified Systems Engineer and Developer. At the same time, I recognize that the company has occasionally overstepped its bounds in its enthusiasm to be at the top of the charts, and that enough people take substantial offense at this that unless SOMETHING is done to put an end to the arguments, the industry (and the government) will waste tremendous amounts of resources pursuing Microsoft without accomplishing anything. I therefore feel that some degree of remedy that discourages anti-competitive behavior while not constraining Microsoft's ability to add new, innovative functionality to its products would be beneficial to both Microsoft and the other parties involved in this legal proceeding, so that all concerned can stop spending money and intellectual capital on this.

Unfortunately, I cannot support the proposed remedy as written, for a variety of reasons both in regards to exact content, and in regards to the philosophical approach it seems to be trying to take.

One specific clause of the remedy document with which I personally take issue is:

III. Prohibited conduct

D. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new version of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner.

The reasons I take issue with this directive are:

1. IMPRECISE SPECIFICATION OF COST. The directive does not specify a cost for this information. It is well known that MS provides access to key technologies, including Windows program source code itself (the MS Crown Jewels, to hear them speak of it) to its most significant customers. What if MS decides to limit access to the materials specified in (D), by requiring that companies spend \$200,000/yr on MS products before they can have access to this material, or by charging \$50,000 for it? Smaller shops, not having the \$ to invest in procuring details of API's that may or may not be useful in their development efforts, would be squeezed out of access to these details, thus limiting MS' potential competition to a "short list" of big businesses. (Tell me, did the AOL lobbyists, Sun and Red Hat jointly recommend this clause that carefully omitted the cost of the API information? It seems to me that it could unfairly provide a near-monopolistic advantage to those large companies at the expense of smaller ones like mine, due to a significant financial barrier of entry to the competitive information.)

2. IMPRECISE SPECIFICATION OF WHAT MS SOFTWARE IS SUBJECT TO THESE CONSTRAINTS. It leaves the door open for MS to define the boundary between Middleware and applications anywhere it chooses. So, Microsoft will use its low-level knowledge of Windows internals to build middleware-like functions into applications themselves, instead of in a separate middleware layer, and insist that those mechanisms which are part of the applications are protected as application source code, not part of the OS or middleware. Even worse, if they embed middleware into the operating system itself, the

API's that communicate between the lower levels of the OS, and the former middleware become no longer subject to disclosure.

3. IMPRECISE SPECIFICATION OF TIMELINESS. The text states that the obligations "shall occur in a Timely Manner". Who will determine what a "Timely Manner" is, and how long (and how much government/taxpayer money) will it take to do so, when Microsoft puts off providing the info? I believe that there needs to be a hard-and-fast deadline stated in the proposed remedy, that is not open for debate/re-interpretation later. For example, a more specific statement might be, "no later than the last major beta test release of any Windows Operating System product/update, and no later than 90 days prior to the final release of that Windows Operating System product/update, whichever is earlier". To get around the restriction in the original proposed remedy, Microsoft could release the "last major beta test release" the DAY before the final product is available for sale, thus giving its applications groups multiple months of head-start in using new API information, before third parties can incorporate the new API information in their own applications. In addition to nailing down the time limit involved, the remedy should recognize the ability for MS to change these API's via "Service Packs" or "Updates" to the Windows Operating System, and explicitly include the changes that result from those updates in this remedy -- or things will start to slip through the cracks without being disclosed, as the court intends.

Notice that the common thread here is IMPRECISE, because it is that lack of precision that will render this portion of the remedy at best ineffective and at worst unenforceable. We've seen over and over again during this case that interpretation of even the most unambiguous statements is cause for debate by one side or the other. There's thus ample incentive to try to make the remedy as specific as possible, and as non-open to multiple interpretations as possible.

In regards to the philosophical approach that this proposed remedy seems to take.... Really, I (and many others in the tech community) want to see a remedy that resolves this issue for the foreseeable future, because it's a distraction. That so much of this remedy appears to specifically address the browser wars, which Microsoft won years ago, is unfortunate. Microsoft has already conquered that territory with a superior product, and most savvy users wouldn't run any browser on the Windows platform other than Microsoft's. I'm sorry if that makes AOL's investment in Netscape a bad call on their part, but it's a fact of life that bad investments sometimes happen in business (especially lately, in anything related to the Internet!).

I truly believe that full disclosure of Windows and middleware API's, and how to use them, will go a long way toward preventing something similar from happening in the future, in another application domain. With disclosure, third parties will have the same access to timesaving pre-built functions that Microsoft's internal application developers have, and it'll be that much more challenging for Microsoft to produce an application that is leaps and bounds, months or even years, ahead of its competition, leaving the competition as far back in the dust as Microsoft left Netscape several years ago. It's still quite doable, but the bar would be raised. A company being challenged to succeed based on innovative uses of intellectual property is just the thing to create wins for consumers, and thus for the industry at large. The FUTURE, not hand-wringing over the past and trying to make something up to AOL and/or Sun that realistically cannot be made up at this point, and which was at least in part a problem to them because of their own suboptimal strategic decision-making, is what the remedy should be about.

Thank you for considering my comments on this matter,

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